THE "MALDIVE IMPORTER"

M.V. "MALDIVE VICTORY", OWNERS OF CARGO LADEN ON v. M.V. "MALDIVE IMPORTER", OWNERS OF

[O.C.J. (Lai Kew Chai J.) December 2, 1983]

[Singapore – Admiralty in Rem No. 112 of 1982]

Shipping Law – Admiralty in rem – Application for stay of proceedings – Principles applied by court.

Practice and Procedure – Admiralty in rem – Application for stay of proceedings – Principles applied by court.

On February 12, 1981, the "Maldive Victory" struck a reef off the Hulule Island in the Maldives and sank with a total loss of the cargo on board. The appellants commenced these *in rem* proceedings and claimed damages for the loss of their cargo. In June 1982, the appellants arrested a sister vessel which was released after the respondents had furnished the usual security.

The respondents applied to stay the proceedings under the inherent jurisdiction of the court on the ground that the appellants and the respondent by an agreement evidenced by the relevant bills of lading had agreed to refer and submit all disputes arising out of or in connection with the said agreement in respect of which matters these proceedings were brought for determination in England or, at the option of the respondents, at the port of destination, *i.e.*, the port of Male of the Republic of Maldives. In bringing the proceedings in Singapore, the appellants were said to have acted in breach of the agreement.

This was an appeal against the decision of the learned Assistant Registrar who allowed the respondent's application that all further proceedings be stayed. The parties have agreed to treat these proceedings as a test case which will determine the forum in which cargo claims of some $4.5 million will be lodged against the respondents out of the sinking of their vessel, "Maldive Victory".

Held, allowing the appeal: (1) the application for a stay should be refused as it was made purely to obtain a procedural advantage which the respondents were not entitled to in all the circumstances;

(2) it was crystal clear that practically all the evidence was in Singapore with which the transactions to be investigated would have the closest nexus. The learned Assistant Registrar had not correctly applied the circumstances of these proceedings to the principles set down by the Court of Appeal in *Amerco's* case.(1)

Cases referred to:

(1) *Amerco Timbers Pte. Ltd.* v. *Chatsworth Timber Corporation Pte. Ltd.* [1977] 2 M.L.J. 181, 182.

(2) *The El Amria* [1981] 2 Lloyd's Rep. 119.

ADMIRALTY IN REM.

M. Karthigesu (*K. Gopalan* with him) for the appellants.

Denis Murphy (*Vivian Ang (Miss)* with him) for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. : This is an appeal against the decision of the learned Assistant Registrar who allowed the respondents' application that all further proceedings be stayed. The parties have agreed to treat these proceedings as a test case which will determine the forum in which cargo claims of some $4.5 million will be lodged against the respondents out of the sinking of their vessel known as the "Maldive Victory".

The respondents' application to stay the proceedings was made under the inherent jurisdiction of the Court on the ground that the appellants and the respondents by an agreement evidenced by the relevant bills of lading had agreed to refer and submit all disputes arising out of or in connection with the said agreement in respect of which matters these proceedings were brought for determination in England or, at the option of the respondents, at the port of destination, that is, the port of Male of the Republic of Maldives. It is common ground that there was such an agreement and that the Respondents had not elected to have the matters determined in the Republic of Maldives. (In bringing the proceedings in Singapore, the appellants are said to have acted in breach of the agreement.)

The relevant principles governing an application to stay proceedings are clearly set out by the Court of Appeal in *Amerco Timber Pte. Ltd.* v. *Chatsworth Timber Corporation Pte. Ltd.*(1) Kulasekaram J., delivering the judgment of the Court of Appeal, said at pages 181-182:

"The law concerning an application for a stay is clear. Where a plaintiff sues in Singapore in breach of an agreement to submit their disputes to a foreign court, and the defendant applies to a stay, the Singapore Court, assuming the claim to be otherwise within its jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not. The court in exercising its discretion should grant the stay and give effect to the agreement between the parties unless strong cause is shown by the plaintiff for not doing so. To put it in other words the plaintiff must show exceptional circumstances amounting to strong cause for him to succeed in resisting an application for a stay by the defendant. In exercising its discretion the court should take into account all the circumstances of the particular case. In the following matters, where they arise:-

(a) In what country the evidence on the issues of fact is situated or more readily available, and the effect of

that on the relative convenience and expense of trial as between the Singapore and foreign courts.

(b) Whether the law of the foreign court applies and, if so, whether it differs from Singapore law in any material respect.

(c) With what country either party is connected and, if so, how closely.

(d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages.

(e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:

(i) be deprived of security for their claim;

(ii) be unable to enforce any judgment obtained;

(iii) be faced with a time-bar not applicable here; or

(iv) for political, racial, religious or other reasons be unlikely to get a fair trial."

It is also relevant to allude to another matter. It is clearly desirable that two or more actions, in which many of the same issues fall to be determined, should be tried together by the same tribunal. In *The El Amria,*[2] Brandon L.J. said at p.128:

"... I do not regard it merely as convenient that the two actions, in which many of the same issues fall to be determined, should be tried together; rather that I regard it as a potential disaster from a legal point of view if they were not, because of the risk inherent in separate trials, one in Egypt and the other in England, that the same issues might be determined differently in the two countries. See as to this *The Pine Hill* [1958] 2 Lloyd's Rep. 146 and *Taunton and Collins* v. *Crome* [1964] 1 W.L.R. 633."

I now turn to the facts. In late January, 1981 the appellants' timber and general merchandise were shipped on the "Maldive Victory" from Singapore to Male, a port of The Republic of Maldives. The vessel was manned by officers and crew who were mainly Indian and Filipino nationals. The vessel also carried, in addition to many other consignments, a consignment of milk and lactogen protein which was transhipment cargo from another vessel known as the "Anro Temasek" belonging to the Neptune Orient Lines. The transhipment cargo was worth some $119,000/-.

On February 12, 1981, the "Maldive Victory" struck a reef off the Hulule Island in the Maldives and sank with a total loss of the cargo on board. The appellants commenced these *in rem* proceedings and claimed damages for the loss of their cargo. 24 other admiralty actions were started in the High Court by other cargo interests arising out of the incident. In June 1982, the appellants arrested a sister vessel which was released after the respondents had furnished the usual security.

The main question which will arise in the trial will be whether the respondents had exercised due diligence to make the vessel seaworthy and whether they had properly manned, equipped and supplied her at the beginning of the voyage. In the proposed draft Statement of Claim the appellants will assert various breaches on the part of the respondents. They will also allege that the Master of the vessel was incompetent and the Master's previous employers, Messrs. Chip Seng of Singapore, would be called to give evidence on the circumstances under which the Master was dismissed. For the Appellants, Captain Clarke, a marine casualty expert practising in Singapore, was engaged to investigate the casualty. He would probably be called to give evidence. The Salvage Association surveyor of the Singapore office had also investigated out of Singapore and although he is residing in Europe, it will not be difficult to arrange for him to testify in Singapore.

As for the evidence on quantum, most of the goods were shipped from Singapore where the evidence will be readily available.

With regard to the transhipment cargo, an action was already commenced in Singapore against the first carrier. Although the respondents are not a party in these proceedings, the facts in issue in that case will arise in the present and the 24 other related proceedings. The claimants of the transhipment cargo are in no position to sue the respondents in England.

The respondents' main contention is that under the United Kingdom Merchant Shipping Act, the Respondents could limit their liability under all the claims by 30% because of the lower rate of conversion of the 100 gold francs under the relevant Act. But for the respondents to qualify for a limitation of liability, there will be an investigation into the question whether the sinking was due to the fault or privity of the respondents. Such investigation largely again will depend on evidence available only in Singapore. At any rate, I am satisfied that the application for a stay should be refused as it was made purely to obtain a procedural advantage which the respondents are not entitled to in all the circumstances.

It is crystal clear that practically all the evidence is in Singapore with which the transactions to be investigated will have the closest nexus. The learned Assistant Registrar had not correctly applied the circumstances of these proceedings to the principles set down by the Court of Appeal in

Amerco's case, I therefore allow the appeal with costs.

Appeal allowed.

Solicitors : *Niru & Co.; Godwin & Co.*

RE SINGAPORE SOUVENIR INDUSTRY (PTE.) LTD.; DR. H. C. HUANG DAN RAKAN–RAKAN v. THE LIQUIDATOR OF SINGAPORE SOUVENIR INDUSTRY (PTE.) LTD.

[O.C.J. (Sinnathuray J.) April 24, 1985]

[Singapore – Originating Summons No. 129 of 1983]

Practice and Procedure – Company in voluntary liquidation – Plaintiffs' claim raises same issue – Subject matter of prior existing consent judgment – Abuse of process of court – Frivolous and vexatious – R.S.C. 1970, O.18 r.19.

In this application, the defendant (the liquidator) sought an order to dismiss the originating summons of the plaintiffs on the grounds that (1) it was frivolous and vexatious, and (2) it was an abuse of the process of the Court.

The plaintiffs contended that they had paid for a piece of land on behalf of the Company of which the defendant was the liquidator. The defendant contended that the contention of the plaintiffs had been the subject matter of an action between the Company and Dr. Huang who in this Originating Summons raises the same issue but in the name of his firm. The result of that action was that there was a settlement and a consent judgment was entered and this has not been set aside. The plaintiffs were dissolved in November 1970 and a receiver was appointed. The Company was wound up in January 1979, and Dr. Huang submitted the proof of debt against the Company in 1982. He and the other directors of the Company signed the statement regarding its assets and liabilities. It is not shown in the statement that the Company was indebted to the plaintiffs or that the plaintiffs had paid $148,552 for the land.

Held, allowing the defendant's application and dismissing the plaintiffs' Originating Summons with costs: (1) the proceedings commenced by the Originating Summons of the plaintiffs were an abuse of the process of the Court;

(2) the plaintiffs' claim was also frivolous and vexatious.

Case referred to:

(1) *Re Art Reproduction Co. Ltd.* [1951] 2 All E.R. 984.

ORIGINATING SUMMONS.

D. Daniel for the defendant/liquidator.
Andrew Ee for the plaintiffs.

Cur. Adv. Vult.

Sinnathuray J. : This application before me on March 29, 1985 in Summons-in-Chambers No. 2399/85 is for an order on the part of the defendant that the Originating Summons that commenced these proceedings be dismissed out of Court under Order 18 rule 19 and under the inherent jurisdiction of the Court on the grounds that (1) it is frivolous and vexatious, and (2) it is an abuse of the process of the Court, and for other orders relating to costs.

Mr. Daniel for the defendant, on the second ground that these proceedings be dismissed as an abuse of the process of the Court, makes two submissions.

It is the contention of the plaintiffs in this Originating Summons that the plaintiffs paid for a piece of land on behalf of the Company of which the defendant is the liquidator. The submission for the defendant is that this contention of the plaintiffs had been the subject matter of an action between the Company and Dr. Huang who, in this Originating Summons, raises the same issue but in the name of his firm.

It is not in dispute that in that action the subject matter was the piece of land, and the result of the litigation was that there was a settlement and a consent Judgment was entered which is exhibited in an affidavit in these proceedings. The relevant portion of that Judgment reads as follows:

> " . . . Upon the Solicitors for the Defendant [Dr. Huang] confirming the title of the plaintiffs [the Company under Liquidation] to the lands [the piece of land]. . . by consent it is . . . adjudged that the Plaintiffs and the Defendant be at liberty to withdraw their respective claims and counterclaims . . . "

After the consent judgment was entered, it would appear that there was some correspondence between the solicitors for the parties, but the crucial fact is that the consent Judgment has not been set aside. So, Mr. Daniel argues that there being a Judgment on record, it would be an abuse of the process of the Court to allow Dr. Huang's firm to raise the issue of the land again in these proceedings. I accept this submission. This, in my opinion, is sufficient reason to dismiss this Originating Summons.

However, there is another submission of Mr. Daniel on the ground of abuse of the process of the Court. The facts relied on are that the plaintiffs, the firm, was dissolved on November 24, 1970 and a receiver had been appointed. It is therefore submitted that the plaintiffs cannot bring these pro-